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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,331	02/06/2004	Ferdinand Schermel	20066.008	4510

7590 04/28/2010
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CANADA

EXAMINER

SINGH, SUNIL

ART UNIT	PAPER NUMBER
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3672

MAIL DATE	DELIVERY MODE
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04/28/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/772,331	SCHERMEL, FERDINAND	
	Examiner	Art Unit	
	Sunil Singh	3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-60,70-75,79-85,87-91 and 102-106 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 51-60,70-75,79-85,87-91 and 102-106 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to because Figures 1, 19, 31 are not labeled with corresponding reference numerals. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "14" and "19" have both been used to designate connecting bar (see page 10 of specification). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of

the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "2" and "4" have both been used to designate calve section see page 12 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "17" has been used to designate linear actuator shown in Figs 3, 8, 24, and 32 and they are not the same actuator. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "3" and "2" have both been used to designate thigh section see page 14 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "45" and "46" have both been used to designate column base see page 15 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "2" and "3" have both been used to designate buttocks section see page 16 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 51-60, 70-75, 79-85, 87-91, 102-106 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The linear actuator “17” shown in Figs 3, 8, 13 (described at page 13 of specification), 24, and 32 is not the same. It is unclear how the actuators are used together. The relationship between actuator (17) depicted in Figure 3 to maneuver thigh and calve sections and the actuator (17) depicted in Figure 8 and the linear actuator (17) described at page 13 of the specification when describing Figure 13, the linear actuator (17) depicted in Figure 24 and linear actuators (17) depicted in Figure 32 are critical and essential to the practice of the invention, but is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).
10. The disclosure is objected to under 37 CFR 1.71, as being so incomprehensible as to preclude a reasonable search of the prior art by the examiner. For example, the following items are not understood: The linear actuator “17” shown in Figs 3, 8, 13 (described at page 13 of specification), 24, and 32 is not the same. It is unclear how the actuators are used together. The relationship between actuator (17) depicted in Figure 3 to maneuver thigh and calve sections and the actuator (17) depicted in Figure 8 and the linear actuator (17) described at page 13 of the specification when describing Figure 13, the linear actuator (17) depicted in Figure 24 and linear actuators (17) depicted in

Figure 32 are critical and essential to the practice of the invention, but is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Applicant is required to submit an amendment which clarifies the disclosure so that the examiner may make a proper comparison of the invention with the prior art.

Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 51-60,70-75, 79-85,87-91, 102-106 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefiniteness and antecedent basis errors that are too numerous to mention each one specifically. Applicant should review all claims carefully and make corrections accordingly. Some examples are noted below:

Claim 102, "thigh/calve" section is confusing because it is not clear if such limitation is the combination of thigh and calve or either thigh or calve.

Claim 102 section c, "said track section" lacks clear antecedent basis.

Claim 55, "the armrest" lacks clear antecedent basis.

Claim 55 line 2 calls for a "swing arm"; claim 54 calls for a "swing arm"; it is unclear if they are the same. If they are the same they should be related.

Claim 56, "the armrest" lacks clear antecedent basis.

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Claim 70, "the coplanar leg section" lacks clear antecedent basis.

Claim 71, "the calves section" lacks clear antecedent basis.

Claim 73, "the frame elements" lack clear antecedent basis.

Claim 74, it is not clear what is meant by the peripheral frame "pivots at distal end pivots".

Claim 74, section c calls for "calves section and/or the thigh section"; it is unclear if this is related to the "thigh/calve" section called for in claim 102.

Claim 75, it is unclear what the "distal end pivot" is.

Claim 79, "the mattress elements" lack clear antecedent basis.

Claim 80, "the mattress element" lack clear antecedent basis.

Claim 81, "the perimeter of the mattress" lacks clear antecedent basis.

Claim 83 is confusing, because it is not clear how the elements of claim 83 relate back to the elements of claim 102.

Claim 87, it is unclear how "an attached armrest" and "swing arm" relate back to claims 53 and 57.

Claim 88 "the calves section" lacks clear antecedent basis.

Claim 89, "the arm rest" lacks clear antecedent basis.

Claim 103, "thigh/calve" section is confusing because it is not clear if such limitation is the combination of thigh and calve or either thigh or calve.

Claim 105, the "resting thigh/calve section" lacks clear antecedent basis.

Claim 106 calls for a "linear actuator"; claim 102 calls for a "linear actuator" it is unclear if they are the same and if they are the same they should be related.

Claim 106, "the thigh section" lacks clear antecedent basis.

Insofar the claims are understood, the following rejection(s) apply:

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 51-60,70-75, 79-85,87-91, 102-106 are rejected under 35 U.S.C. 102(b) as being anticipated by EP document (EP 1092371)

EP document '371 discloses a multi-position reclining bed comprising a track (Fig. 4a), a plurality of supporting elements (22,20,26) positioned above and overlying said track and moveably coupled thereto, and comprising a back section (22), buttocks section (20) and thigh/calve section (26), said supporting elements being pivotably connected to each other at the abutting edges and a linear actuator (see Fig. 4B) coupled to the supporting elements, said back section being coupled to said track section and configured to move an end portion thereof vertically in a vertical plane when said linear actuator is activated (Figs. 1,3), such that when said back section is raised (see Fig. 1) or lowered (see Fig. 3), said end portion remains substantially the same distance from an adjacent wall (see abstract, "wallhugger"), and wherein said thigh/calve section (26) reclines pivotally below a horizontal plane of the buttocks (see Fig. 1) in a downward direction pivotally about an adjoining edge with the buttocks section.

Response to Arguments

15. Applicant's arguments with respect to claim 102 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sunil Singh/
Primary Examiner, Art Unit 3672

Sunil Singh
Primary Examiner
Art Unit 3672

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